IN THE COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 610 OF 1989

Aba Vishnu Kadam ... Appellant
(Original Defendant)

V/s.

1. Jagu Chandru Khot,
   Since deceased by his heirs
   (a) Vasant Jagu Kadam (Khot)

2. Sambhaji Raghu Khot ... Respondents
(Original Plaintiffs)

Smt. A.N. Helekar for Appellant
Shri V.B. Rajure for Respondent Nos. 1A and 2.

CORAM : S.R. SATHE, J.
DATED : 28th March, 2006

ORAL JUDGMENT :-

1. The Appellant, original defendant in Regular Civil suit No. 212 of 1979 has preferred this appeal against the judgment and order passed by the Court of the 4th Additional District Judge, Sangli in Regular Civil Appeal No. 516 of 1983 whereby the judgment and order passed by the trial Judge dismissing the Plaintiff's suit was set aside and Plaintiff's suit was decreed and defendant was directed to hand over possession of the suit land to plaintiffs. For the sake of convenience hereinafter the parties shall be referred to as the plaintiffs and defendant. The brief facts giving rise to this appeal are as under :-

2. The suit lands described in detail in para-1 of the plaint were initially owned by one Vishnu Rama Chougule. His son Krishna predeceased him leaving behind the widow Janabai. Vithu adopted the present Appellant (original defendant) on 01/11/1922. Vishnu transferred the suit lands to Janabai wife of Krishna for maintenance by settlement deed. Janabai had two brothers viz. Jagu and Sambhaji i.e. present Respondents. She executed sale deed dated 18/10/1968 in favour of Respondents. The said sale deed was against the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947 (hereafter referred to as the Consolidation Act) as necessary permission from Collector was not sought prior to sale deed. Aba, original defendant therefore filed regular civil suit No. 138 of 1969 against present respondents and the said suit was decreed. Being aggrieved by the same the defendant preferred appeal but the same also came to be dismissed. In pursuance of the said decree present defendant (Aba) took possession of the land.

2A. On 29/08/1977 Section 31 of the Consolidation Act was amended and section 31AB was introduced. As a result of the said amended provisions of earlier transactions which were held to be invalid or void

because of breach of provisions of Consolidation Act and in particular because of breach of section 31 of the said Act were validated. Hence the present Respondents filed the above mentioned suit i.e. Suit No. 212 of 1979 and prayed for setting aside of the decree passed in Regular Civil Suit No. 138 of 1969.

3. The defendant filed written statement at Exh-23 and opposed the suit. The defendant took several contentions including that present suit is barred by principle of res judicata as the decree passed in Regular Civil Suit No. 138 of 1969 became final and possession is also taken in execution of the same. He also contended that amended section 31AB has not created any right in favour of the present Respondents. Hence on all these grounds the defendant prayed for dismissal of the suit.

4. The trial Court came to the conclusion that amended provisions of section 31AB has not created any right in favour of the plaintiff and suit is in fact barred by law of limitation and principle of res judicata. He therefore dismissed the plaintiff's suit.

5. Being aggrieved by the same the Plaintiffs

filed First Appeal bearing Appeal No. 516 of 1983. After hearing arguments of both the learned Advocates the first Appellate Court came to the conclusion that by virtue of amended Section 31AB of the Consolidation Act the sale deed in question has to be held valid. He therefore set aside the earlier decree passed in Regular Civil Suit No. 138 of 1969 and directed the defendant to hand over possession of the suit property to the plaintiff.

6. It is this order that is being challenged by the original defendant in this Court.

7. From perusal of the record it appears that while admitting the appeal this Court (Coram : Kolse Patil, J.) has passed the following order :-

> “ Substantial question of law mentioned in ground Nos. 1 to 7 are involved.
> Admit. Leave to amend.
> Grounds 1 to 7 read as under :-
>
> (1) Whether the provisions of the amended sections 31 and 31A of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (“the said Act”) have

retrospective effect ?

(2) Whether the retrospective operation of sections 31 and 31A of the said Act would affect the vested rights of the Appellant-Defendant ?

(3) Whether the retrospective operation of the said sections of the said Act would nullify the suit sale deed ?

(4) Whether the said decree of the lower Appellate Court was barred by the principles of res judicata ?

(5) Whether the suit was also barred by the principles of limitation ?

(6) Whether the suit was liable to be dismissed because it was beyond the period of limitation ?

(7) In view of the fact that the earlier Civil Appeal no. 334 of 1974 was allowed and the decree was executed the decree having become final because no Second Appeal was preferred, Whether the same question can be re-opened and the

suit could be held within limitation on the ground that the cause of action arose when the said Act amended on 29th August, 1977 ?

8. In this appeal before me, Smt. Helekar, learned Advocate for the Appellant original defendant has urged only 2 points. Firstly, she submitted that amended provision of section 31AB has no retrospective effect and as such the said section would not give any right in favour of the Plaintiff. Secondly she canvassed before me that as per the provisions of Section 31AB sub clause (2) of the Consolidation Act it was in fact necessary for the Respondents herein to obtain certificate as contemplated under the said sub clause, and as such certificate is not obtained, plaintiffs are not entitled for a decree as prayed.

9. As against this Shri Rajure, learned Advocate for the Respondent original plaintiffs supported the judgment and order passed by the first appellate court.

10. In order to find out whether there is any substance in the arguments advanced by the learned Advocate for the Appellant original defendant. It would

be worthwhile to see what section 31AB says. The said section read as under :-

> Section 31AB (1) No transfer of sub-division of any land in contravention of section 31 as it stood immediately before the date of commencement of the Bombay Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 1977, made on or after the 15th day of November, 1965 and before the date of such commencement shall be deemed to be void or ever to have become void merely on the ground that such transfer or sub-division is effected in contravention of the provisions of that section as it stood before such commencement and shall be deemed to be valid if such transfer or sub-division is in accordance with the provisions of section 31 as substituted by the said Act.
>
> (2) For the purposes of this section, a certificate granted by the Collector, after holding such inquiry as he deems fit, that any transfer or sub-division of

any land is valid under this section shall be final and conclusive evidence in that behalf, any holder may apply to the Collector for such certificate.

11. The bear reading of above mentioned section is sufficient to indicate that this section has retrospective effect. In fact even if we take into consideration the objects for passing the above mentioned amended provision then also it is very clear that as during the period between 15/11/1965 till 1977 several transactions with regard to sell were held to be invalid because of the breach of the provisions of section 31 of the Consolidation Act, in order to validate the said transactions the Legislature thought it fit to introduce section 31AB. In fact, similar such attempt was made earlier to regularize the earlier transactions and for that purpose section 3AA was introduced. The learned Advocate for the Respondent original plaintiff also submitted that when the words of statue are clear, plain or unambiguous courts must give effect to that meaning irrespective of consequences. For this purpose he has placed reliance on a case, Secretary, Shiorai Education Society, Wani V/s. Presiding Officer, School Tribunal, Aurangabad and

Ors. 2000 (2) Mh.L.J. wherein also this Court has observed : (Para 8 of the judgment)

12. So bearing in mind the above principle of law and interpretation of statute if we see the wording of section 31AB then also it is very clear that it has retrospective effect and as such the said provision is applicable to the transaction in question which was also held to be invalid as a result of section 31 and accordingly decree was passed in earlier Suit No. 138 of 1969. So, I have absolutely no hesitation to hold that there is no substance in the argument advanced by the learned Advocate for the Appellant in this behalf.

13. Turning to the second point i.e. Application of Sub clause 2 of section 31 AB, the learned Advocate for the Appellant has submitted that it was in fact necessary for the Plaintiffs, first to approach the Collector for obtaining certificate contemplated under this sub section. According to her, enquiry is contemplated through the Collector and when such inquiry is held and Collector is satisfied that for a particular transaction the provisions of section 31AB are applicable then he will issue certificate to that effect. According to her as such certificate is not

issued in the instant case, the present suit is not maintainable. I do not agree with this submission for the obvious reason that bare reading of sub clause 2 indicates that it is only an enabling provision, there is noting in this section which would indicate that inquiry as per sub clause 2 is a sine qua non for coming to the conclusion as to whether a particular transaction is validated by virtue of application of section 31AB. In the instant case, the said transaction is held to be invalid by the civil court. Once we find that earlier transaction has already been held to be invalid and against the provisions of Consolidation Act and on that ground sale deed was held to be void by the Court, then, after coming into operation of section 31AB it became necessary for the Plaintiff to get the said decree set aside and this can be done only by the Civil Court and not by the Collector. So, it can not be said that for seeking relief of setting aside the earlier decree, it was first necessary for the present plaintiff to obtain certificate as contemplated under sub clause 2 of section 31AB of the Consolidation Act.

14. From the perusal of the judgment of the first Appellate Court, it is very clear that first appellate Court has rightly considered the legal provisions and

correctly held that as a result of this provision the sale deed in question is consequential the earlier decree.

15. The learned Advocate for the Appellant tried to take an advantage of the fact that first appellate Court had not specifically set aside the earlier decree passed in Regular Civil Suit No. 138 of 1969. However, if we peruse the entire judgment, it is very clear the first appellate court has positively held that as result of amended provision of section 31AB the earlier decree passed in the former suit has become nullity. So, even if the first appellate court has not specifically mentioned that the said decree has been set aside it would not change the fate of this appeal.

16. In this view of the matter there is no substance in this appeal. Hence the appeal is dismissed with costs.

(S.R. SATHE, J.)